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*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

National Tobacco Company, LP

Plaintiff,

-against-

Timothy Parker and Xavier Mosley p.k.a.  
Blackalicious, Raymond Riley p.k.a. Boots  
Riley, Solomon David and Marlon Irving,  
p.k.a., Lifesavas,

Defendants.

Case No. 08 CV 03383 (SAS)

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO AMEND COMPLAINT AS OF  
RIGHT PURSUANT TO FRCP 15(a)**

Plaintiff National Tobacco Company LP (NTC) moves under Fed. R. Civ. P. 15(a) to amend its complaint as of right. NTC, through its indirect parent company North Atlantic Operating Company, Inc., is the exclusive distributor in the United States for the Zig-Zag® cigarette paper products. In connection with that product, NTC has embarked on a series of concert tours, sponsored by NTC. Defendants are musicians who have appeared at various times, in various locations, on the ZigZagLive concert tour.

Rule 15(a) provides:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served...

FRCP 15(a). Where, as here, the defendants have not answered the complaint, the first

amendment of the complaint is as of right. *Washington v. New York City Board of Estimate*, 709 F.2d 792, 795 (2d Cir. 1983). Plaintiff therefore should be allowed to amend its complaint as of right.

Between the time of filing the complaint (April 4, 2008) and this Motion (April 9, 2008) Plaintiff received, through counsel, an email from Defendants' lawyer threatening to contact the "30-40" bands that Plaintiff featured on its website ZigZagLive.com as having participated in the ZigZagLive concert tour. (See Proposed Amended Complaint, Exhibit 4) Defendants' counsel made the express threat that after that contact, those "30-40" bands would likely bring lawsuits against Plaintiff as a result of Defendants' communication. *See Declaration of Marcella Ballard*, dated April 9, 2008 ("Ballard Decl.").

Accordingly, Plaintiff has amended its complaint to add causes of action for defamation (Count 2), tortious interference with contract (Count 3) and trade libel (Count 4) and to expand upon the facts relating to the ZigZagLive tour and Defendants' participation in that tour. *See Ballard Decl. Ex. 1: Proposed Amended Complaint.*

### **CONCLUSION**

Plaintiff respectfully requests that the Court GRANT its request to amend its Complaint, and allow Plaintiff to file the proposed Amended Complaint attached to the Ballard Declaration as Exhibit 1.

Dated: April 9, 2008

By: /S/ Marcella Ballard

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